IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 887

UNITED STATES RUBBER COMPANY, *Petitioner,*

v.

UNDERWATER STORAGE, INC., *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

Respondent maintains that, in its present posture, this case is not mature for review by this Court on certiorari. By reversing the District Court's summary judgment for defendant, however, the Court of Appeals has made a *final determination* that Petitioner shall be liable for any use he has made, within the three

year period just prior to the bringing of this action, of information which he is shown to have originally misappropriated and then published, even though such publication admittedly occurred more than three years before the action was commenced. Unless this Petition is granted this final determination is the law of the case, is binding upon the parties hereto, and will never be subject to re-examination or alteration in any subsequent proceeding herein. It has the full effect of a rule of law which is *stare decisis* within the jurisdiction of the Court of Appeals and which is highly persuasive in all other jurisdictions inasmuch as it is the only decided case on the point.

The importance of this case, deprecated by Respondent, rests in part on the fact that information, published and readily available for use by the public at large for a period exceeding in duration the period defined by the statute of limitations, has for the first time been held to give rise to an interest protectable by the common law. Thus, the importance of this case can not be appreciated if the fact of the publication of the secret information before the inception of the period defined by the statute of limitations is ignored, as it is throughout Respondent's Brief.

None of the many cases cited by Respondent in its first point of argument are relevant to a situation where the protectable interest has been destroyed before the inception of the statutory period. It is for this reason that the Court of Appeals, after being referred to most of these same cases by Respondent, decided the case on the express premise that it had no dispositive precedent to guide it. The Court of Appeals did rely heavily on a principle it found in *International News Service* v. *Associated Press,* 248 U.S. 215 (1918),

but Respondent does not mention this case. The Respondent's complete departure from the rationale of the Court of Appeals' decision suggests that Respondent, too, has serious doubts about its validity.

In view of Respondent's allegation that he has been granted a patent on this former trade secret (Complaint paragraph 3, Appendix to Petition page 1a), it is quite clear that if it obtains the injunctive relief it has prayed for, Petitioner will continue to be enjoined from using the subject matter of that patent after it has expired, in conflict with the rule laid down in *Brulotte* v. *Thys,* 379 U.S. 29 (1964) and *Scott Paper Co.* v. *Marcalus Mfg. Co.,* 326 U.S. 249 (1945).

The issuance of a writ of certiorari to the Court of Appeals for the District of Columbia Circuit in this case is therefore respectfully solicited.

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